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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DANIEL TEKLEMARIAM HAGOS,

12 Plaintiff,

13 v.

14 GOODMAN, HANNING, KING
15 COUNTY JAIL,

16 Defendants.

17 CASE NO. 2:23-CV-433-RSL-DWC

18 ORDER DECLINING TO SERVE

19 The District Court referred this action to United States Magistrate Judge David W.
20 Christel. Plaintiff Daniel Teklemariam Hagos, proceeding *pro se* and *in forma pauperis*, filed
21 this civil rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's
22 Complaint under 28 U.S.C. §1915A, the Court finds Plaintiff has failed to state a claim upon
23 which relief can be granted, but provides Plaintiff leave to file an amended pleading by May 10,
24 2023, to cure the deficiencies identified herein.

1 **I. Background**

2 In the Complaint, Plaintiff, a pretrial detainee housed in the King County Jail (“Jail”),
 3 alleges Defendant Goodman, an employee of the Jail, verbally harassed Plaintiff and touched
 4 Plaintiff’s skin when putting a wristband on Plaintiff. Dkt. 1.

5 **II. Discussion**

6 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
 7 complaints brought by prisoners seeking relief against a governmental entity or officer or
 8 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
 9 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
 10 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
 11 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
 12 152 F.3d 1193 (9th Cir. 1998).

13 To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a
 14 violation of rights protected by the Constitution or created by federal statute, and (2) the
 15 violation was proximately caused by a person acting under color of state law. *See Crumpton v.*
 16 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
 17 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
 18 (1994).

19 To satisfy the second prong, a plaintiff must allege facts showing how individually
 20 named defendants caused, or personally participated in causing, the harm alleged in the
 21 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350,
 22 1355 (9th Cir. 1981). A person subjects another to a deprivation of a constitutional right when
 23 committing an affirmative act, participating in another’s affirmative act, or omitting to perform an
 24

1 act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Sweeping
 2 conclusory allegations against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d
 3 at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but must allege the
 4 defendant's own conduct violated the plaintiff's civil rights. *City of Canton v. Harris*, 489 U.S.
 5 378, 385-90 (1989).

6 In the Complaint, Plaintiff contends Defendant Goodman verbally harassed him on one
 7 occasion and touched Plaintiff's skin when putting a wristband on Plaintiff. Dkt. 1. Plaintiff states
 8 Defendant Hanning failed to investigate the allegations regarding Defendant Goodman's conduct.
 9 *Id.* Allegations of verbal harassment and abuse are not sufficient to state a claim for relief under
 10 §1983. See *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987). Furthermore, Plaintiff's
 11 complaints that Defendant Hanning did not properly investigate are conclusory and lack sufficient
 12 factual basis to state a claim. For these reasons, the Court finds Plaintiff has not alleged a
 13 constitutional violation.

14 Plaintiff has also named the King County Jail as a defendant. Dkt. 1. The Jail is not a
 15 legal entity capable of being sued under § 1983. Rather, King County, a municipality, would be
 16 the proper defendant. See *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690,
 17 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Wright v. Clark County Sheriff's Office*, 2016 WL
 18 1643988, *2 (W.D. Wash. April 26, 2016). To set forth a claim against a municipality, a plaintiff
 19 must show the defendant's employees or agents acted through an official custom, pattern, or
 20 policy permitting deliberate indifference to, or violating, the plaintiff's civil rights, or that the
 21 entity ratified the unlawful conduct. *Id.* at 690-91. A plaintiff must show (1) deprivation of a
 22 constitutional right; (2) the municipality has a policy; (3) the policy amounts to deliberate
 23 indifference to a plaintiff's constitutional rights; and (4) the policy is the moving force behind
 24 the constitutional violation. See *Oviatt v. Pearce*, 954 F.3d 1470, 1474 (9th Cir. 1992).

1 Plaintiff has not named King County as a defendant and has not alleged facts to show
 2 King County is liable. *See* Dkt. 1. For example, Plaintiff does not challenge a policy, custom, or
 3 practice. If Plaintiff seeks to sue King County, he must name King County as a defendant and
 4 allege facts sufficient to meet the required elements of a claim against a municipality and show
 5 King County violated his constitutional rights.

6 In sum, the Court finds Plaintiff has not stated a claim upon which relief can be granted.

7 **III. Instruction to Plaintiff and the Clerk**

8 Due to the deficiencies described above, if Plaintiff intends to pursue a § 1983 civil rights
 9 action in this Court, he must file an amended complaint and within the amended complaint, he
 10 must write a short, plain statement telling the Court: (1) the constitutional right Plaintiff believes
 11 was violated; (2) the name of the person who violated the right; (3) exactly what the individual
 12 did or failed to do; (4) how the action or inaction of the individual is connected to the violation
 13 of Plaintiff's constitutional rights; and (5) what specific injury Plaintiff suffered because of the
 14 individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

15 Plaintiff shall present the amended complaint on the form provided by the Court. The
 16 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
 17 and not a copy, it should contain the same case number, and it may not incorporate any part of
 18 the original complaint by reference. The amended complaint will act as a complete substitute for
 19 the original complaint, and not as a supplement. An amended complaint supersedes the original
 20 complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on*
 21 *other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the amended
 22 complaint must be complete in itself and all facts and causes of action alleged in the proposed
 23 complaint that are not alleged in the amended complaint are waived. *Forsyth*, 114 F.3d at 1474.
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1 The Court will screen the amended complaint to determine whether it contains factual allegations
2 linking each Defendant to the alleged violations of Plaintiff's rights. The Court will not authorize
3 service of the amended complaint on any Defendant who is not specifically linked to a violation
4 of Plaintiff's rights.

5 If Plaintiff fails to file an amended complaint or fails to adequately respond to the issues
6 raised herein on or before May 10, 2023, the undersigned will recommend dismissal of this
7 action. The Clerk is directed to send Plaintiff a copy of this Order and the appropriate forms for
8 filing a 42 U.S.C. § 1983 civil rights complaint and for service.

9 Dated this 7th day of April, 2023.

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12 David W. Christel
13 Chief United States Magistrate Judge
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